Metropolitan Teleph. & Teleg. Co. v. *Colwell Land Co.*, 18 Jones & Spen. 488; *Broome* v. *N. Y. & N. J. Teleph. Co.*, 42 N. J. Eq. 141; *Western U. Teleg. Co.* v. *Williams*, 86 Va. 696; *Chesapeake and P. Telegraph Co.* v. *Mackenzie*, 74 Md. 36; *Daily* v. *State*, 51 Oh. St. 348; *Stowers* v. *Postal Teleg. Cable Co.*, 68 Miss. 559; *Board of Trade Teleg. Co.* v. *Barnett*, 107 Ill. 507; *Jaynes* v. *Omaha Street Rwy. Co.*, 53 Neb. 631.

The following cases, however, hold the contrary:—*Pierce* v. *Drew*, 136 Mass. 75; *Irwin* v. *Great Southern Teleph. Co.*. 37 La. Ann. 63; *Rugg* v. *Commercial U. Teleg. Co.* 66 Vt. 208; *Cater* v. *Northwestern Teleph. Exchange Co.*, 60 Minn. 539; *People* v. *Eaton*, 100 Mich. 208; *Julia Bldg. Ass'n.* v. *Bell Teleph. Co.*, 88 Mo. 258; *Hershfield* v. *Rocky Mt. Bell Teleph. Co.*, 12 Mont. 102; *Magee* v. *Overshimer*, 150 Ind. 127; *Taggart* v. *Newport St. Ry. Co.*, 16 R. I. 668.

DILLON ON MUNICIPAL CORPORATIONS, Vol. II. § 698 1 expresses the better view when he says, "On the whole, the safer and perhaps sounder view is that such a use of the street or highway, attended as it may be especially in cities with serious damage and inconvenience to the abutting owner, is not a street or highway use proper, and hence entitles such owner to compensation for such use, or for any actual injury to his property caused by poles and lines of wire placed in front thereof."

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF PARENTS NOT IMPUTED TO THE CHILD.—A father instructed his son, who was four years and three months old, to go between cars on a railroad track; the child's foot was caught because of a defective crossing, and he was injured by a passing train. He sued by his guardian ad litem. *Held*, that he could recover. *Eskildsen* v. *City of Seattle* (1902),— Wash, — 70 Pac. Rep. 64.

The weight of authority among the American cases seems to be with this case; however there is a strong line of cases, both in England and the United States to the effect, that when a child is negligently permitted by its parents or guardian to stray on a thoroughfare or a railroad track, this negligence may be regarded, even where the child brings suit through a guardian or prochein ami, as the contributory negligence of the child. *Singleton* v. *E. C. R. R.*, 7 C. B. (N. S.) 287; *Mangan* v. *Atherton*, L. R. 1 Exch. 239; *Brown* v. *R. R.*, 58 Me. 384; *Leslie* v. *Lewiston*, 62 Me. 384; *Holly* v. *Gas Co.*, 8 Gray 123; *Callahan* v. *Bean*, 9 Allen 401; *Lehman* v. *Brooklyn*, 29 Barb. 234; *Ewen* v. *R. R.*, 38 Wis. 613.

The leading case in this country is *Hatfield* v. *Roper*, 21 Wend. 615. 34 Am. Dec. 273.

Although these courts have adhered more or less closely to this rule, there is a strong tendency to confine it strictly and not in anywise to extend it. BEACH ON CONTRIBUTORY NEGLIGENCE, § 122.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE—RAILROADS.—Plaintiff stepped on defendant's tracks 600 feet from a station, where a train was then standing. The view was unobstructed. Plaintiff then walked away between the rails in the direction in which such train was about to go, without looking back, or using any of her senses to ascertain the approach of the train, and while so walking was struck by the train and injured. The agents of the company did not see her. *Held*, that plaintiff might recover. *Denver and Rio Grande R. R.* v. *Buffehr* (1902), — Colo. —, 69 Pac. Rep. 582.

There is much conflict upon this point. It is however generally held that a railroad company is not bound to keep a lookout for trespassers upon its tracks. 3 *Elliott on Railroads*, § 1257; *Burg* v. *Railroad Co.* 90 Iowa 106.

As a general rule a trespasser upon a track, who fails to make use of his senses to keep himself informed of the approach of trains will be held guilty of contributory negligence, and cannot recover for an injury, notwithstanding concurrent negligence on the part of the railroad company. 1. *Thompson on Negligence* 449; *Elwood* v. *N. Y. C. & H. R. R. Co.* 4 Hun, 808.

A number of American states follow the English rule, (3 & 4 Vict. c. 97, § 16) and hold that railroad companies are under no obligations to take precautions against trespassers: *Mulherrin* v. *D. L. & W. R. R. Co.*, 81 Pa. St. 366, and one who steps upon a railroad track, does so at his peril. *L. S. & M. S. R. R. Co.* v. *Hart*, 20 Ill. 478.

NEGLIGENCE—PROXIMATE CAUSE.—Plaintiff, aged 69, was talking to a friend, who held his arm, when defendant, weighing 235 pounds, in passing greeted this friend by seizing his arm and drawing him aside so that the plaintiff fell and was injured, Defendant's act was friendly, and was a customary greeting. Defendant did not notice plaintiff, or know that he fell. In an action for damages for wilful assault, *Held*, that defendant's act was the proximate cause of the injury, and constituted wilful assault, for which recovery may be had. *Reynolds* v. *Pierson* (1902), — Ind. —, 64 N. E. Rep. 484.

The court said that since the defendant might have passed without interfering with the person of any one, his failure to do so implied his willingness to cause the injury inflicted, thus using the language employed in *Mercer* v. *Corbin*, 117 Ind. 450, 3 L. R. A. 221, upon which it mainly relies. Negligence seems to be presumed rather than based upon proof. That the cause was in its nature accidental is lost sight of. While the defendant was exercising a legal right his intent is not considered. That it should be is held by 1 HILLIARD ON TORTS, 190; *Paxton* v. *Boyer*, 67 Ill. 132; *Hoffman* v. *Eppers*, 41 Wis. 258-9. That the defendant's act was the proximate cause of the injury is not in accord with the great weight of authority upon this matter; as, *Milwaukee R. R. Co.* v. *Kellogg*, 94 U. S. 469; *Penna. R. R. Co.* v. *Hope*, 80 Pa. St. 373, 21 Am. Rep. 100; COOLEY ON TORTS, 91, 752, 801. This decision goes further than any previous case of like nature, and is not sustained by authority. See POLLOCK ON TORTS, 36, 37; SHEAR. & RED. ON NEG. 10; *Bullock* v. *Babcock*, 3 Wendell 391; *Johnson* v. *McConnell*, 15 Hun, 293; *Ricker* v. *Freeman*, 50 N. H. 420; *Wright* v. *Clark*, 50 Vt. 130; 1 Bingham 213; *Brown* v. *Kendall*, 6 Cush. 292; *Morris* v. *Platt*, 32 Conn. 75; *Harvey* v. *Dunlop*, Hill & D. Supp. N. Y. 193; *Bizzell* v. *Booker*, 16 Ark. 308; AMER. & ENG. ENCYC. LAW, I, 272, XVI., 406; 1 ADDISON ON TORTS, 510.

PLEADING—SUFFICIENCY OF DECLARATION—FRAUD.—A had a worthless lease. He transferred it to his brother-in-law, who, in accordance with A's plans, made a deed to one B, expressing a consideration of $100,000. A then paid B to execute a trust deed on the property for $75,000 to C, a trust company, securing notes of B to that amount, the former placing the notes on the market. The plaintiff, relying on the recital of consideration in the trust deed and the statements in the notes, bought certain of the paper. Finding B not responsible she brings an action of deceit against A. *Held*, that a declaration containing the above facts states a good cause of action. *Leonard* v, *Springer* (1902), — Ill., —, 64 N. E. Rep. 299.

The law as to what constitutes fraud is clear; difficulties arise only when the rule is applied to particular facts. False representations made to the public are actionable when the plaintiff has been injnred by relying on them. *Morse* v. *Swits*, 19 How. Prac. (N. Y.) 275; *Bartholomew* v. *Bentley*, 15